A

SUCCINCT AND BRIEF EXPOSITION

OF

THE LAWS

WHICH RELATE TO THE

MEDICAL PROFESSION.

(FROM THE MEDICAL DIRECTORY).

BY

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INTRODUCTORY REMARKS.

The medical profession of Great Britain and Ireland consists of about 30,000 individuals—a body of men which is second to none throughout the vast expanse of the habitable globe, whether we view it through the medium of industry, philanthropy, or science.

Such an amount of intelligence, if brought to bear on any given point—whether its object be social, political, or scientific—must necessarily exert a most important influence and lead to equally important results; but, until now, no effort has been made to unite this vast and powerful body.

It would seem that the legislation of past centuries had done its utmost to promote disunion, for we find no less than seventeen Incorporated Institutions, legally authorised to grant Medical Degrees and Licences; each possessed of supreme power in its own way, and jealous of its own rights.

We enumerate them thus—in England there are six, viz. :—

The Universities of Oxford, Cambridge, and London.

The Royal College of Physicians, London.

The Royal College of Surgeons, London.

The Worshipful Company of Apothecaries, London.

In Scotland there are seven, viz. : —

The Universities of Edinburgh, Glasgow, Aberdeen, and St. Andrews.

The Royal College of Physicians, Edinburgh.

The Royal College of Surgeons, Edinburgh.

* The Faculty of Physicians and Surgeons, Glasgow.

In Ireland there are four, viz. —

Dublin University (Trinity College), Dublin.

King and Queen's College of Physicians, Dublin.

The Royal College of Surgeons, Dublin.

The Governor and Company of Apothecaries Hall, Dublin.

* By a recent judgment in Scotland, this institution has been virtually disqualified.—Vide Sir J. Graham's speech on the medical question, in the *Times*, February 25th.

To these may be added, a medical curiosity in the nineteenth century, "The Lambeth Diploma," which is simply a licence to practise as a physician, granted by the Primate of all England, for the time being, to any one whom HE might think fit, and so forth.

Such diplomas are now held by individuals of high respectability, and are their only authority to be called physicians.

This being the state of things, it follows, as a matter of course, that the laws which relate to them were conceived in the same narrow and illiberal spirit—such as they are, it is our duty to place before the whole profession.

In undertaking the compilation and arrangement of the Medical Directory, we have the stern facts to deal with; and such we intend to give to the profession and to the public every year, in a faithful record of the profession as it is. We will not enter into any hypothetical calculation on the one side, or delusive anticipation on the other; the profession and the public shall know the actual position of all qualified medical men in the kingdom, according to the degree of merit, or the guarantee for public confidence to which their diploma or licence may entitle them. Having premised thus far the purport of this work

we submit, in confidence to our readers, the following brief notice of the laws as they relate to the various branches of the medical profession, in England and Wales.

THE

LAWS AFFECTING MEDICAL MEN.

The laws affecting medical men, though neither numerous or complex, are sufficiently technical to justify a short exposition. It is not, however, intended, in these pages to go into the history and qualifications of the various medical corporations in this kingdom; such a proceeding, though interesting to the student or antiquarian, being but ill suited to the practical object of the Medical Directory. Neither is it proposed to discuss or point out the course to be pursued by the candidate for medical honours. This work is addressed to those members of the profession who have *already* attained their position; and to the rights and liabilities which attach to them, as qualified members, it is that we alone propose to address ourselves.

In considering this subject, it will be convenient to arrange it according to the various branches of medical practitioners; taking the laws as they severally affect Physicians, Surgeons, and Apothecaries, and thus to point out the province of each branch, and the rights, immunities, and responsibilities of all. First, then, of

Physicians.—It is a remarkable feature in connexion with this, the highest body of medical men, that the law of the land, whilst it makes strict and powerful provision for the ensurance of learning and ability amongst them, should leave their remuneration a matter of honour with the patients themselves. Such, however, is the fact. A physician is entirely at the

mercy of his patient for the remuneration of his services; and although in this particular he is placed upon the same footing with the barrister, the latter has this security for his fees, that he never appears for his client without written instructions (called a brief or a case), and that, by the uniform custom of his profession, his fees are paid at the time his instructions are delivered, pre-payment always securing him against loss. The first judicial decision upon the question of the inability of a physician to sue for his fees is that of *Chorley* v. *Bolcot*, 4, *Term Reports*, 317. In that case, an action had been brought by a physician against the executor of his patient, for the amount of his fees. At the trial at York, in the year 1791, the jury gave him a verdict for the amount he claimed; a motion was afterwards made in the Court of King's Bench to set this verdict aside, on the ground that no action lay for a physician's fees; and after an able argument, *Lord Kenyon* gave the following judgment:—"I remember a learned controversy, some years ago, as to what description of persons were intended by the *medici* at Rome, and it seemed to have been clearly established by Dr. Mead, that by those were not meant physicians, but an inferior degree amongst the professors of that art, such as answer to the description of surgeons amongst us. But, at all events, it has been understood, in this country, that the fees of a physician are honorary, and not demandable of right. And it is much more for the credit and rank of that honourable body, and perhaps for their benefit also, that they should be so considered. It never was yet heard of, that it was necessary to take a receipt upon such an occasion. And I much doubt whether they themselves would not altogether disclaim such a right as would place them upon a less respectable footing in society than that which they at present hold." The rule to set aside the verdict was made absolute.

Since the above decision, it never has been questioned that a physician has no legal claim to his fees; and the same principle governs, although the individ-

ual be *not* a physician, if he passes himself off as one; and this, notwithstanding, he would have been enabled in another character to have sustained his claim. This point was decided in the case of *Lipscombe* v. *Holmes*, 2 *Campbell's Reports*, 441, which was an action for work and labour as a surgeon, and for curing the defendant and several persons of his family of divers diseases and maladies. The first defence set up was, that the plantiff was a physician, aud therefore could not maintain an action for his fees. It appeared that he wrote prescriptions—was called "*Doctor*," and signed himself "*M.D.*" For the plantiff, it was said by his counsel that he should show that at the time when the visits were paid, for which the action was brought, the plantiff was duly a surgeon, and that he had not taken out his diploma as a physician till long after. Lord *Ellenborough*, however, said—"If a person passes himself off as a physician, he must take the character *cum onere*. When he brings an action for visits paid by him as a physician, I will give him credit for being so, and tell him he must trust to the honour of his patients. Whether the plantiff had or had not a diploma when he attended the defendant, is immaterial. Whatever he was, if he at that time wrote prescriptions, and added '*M.D.*' to his name, he must be non-suited."

Although, however, a physician cannot recover his fees when he has attended his patient upon the ordinary footing, yet, if there has been an express contract to pay him before he gave his services, or if there be evidence from which such a contract can be inferred (beyond the ordinary evidence of attendances), the physician is entitled to recover. This was so held in the case of *Veitch* v. *Russell*, *Carrington and Marshman's Reports*, 362, in which, from the letters of the defendant, there was reason to suppose that an express contract had been made for remuneration. In this case, Mr. Justice *Wightman* says, "This is an action by a physician to recover compensation for his professional services; such an action is unusual, because

there is in general a conventional mode of payment, which may be accounted for by the obvious impossibility of setting a specific value on services chiefly intellectual. But though the action is unusual, it is still a novel doctrine to me to hear that a physician cannot contract for compensation. All that the cases decide is, that a contract cannot be implied from the mere fact of the physician's attendance on a patient; but he may contract for a fixed sum, or for a reasonable compensation at the end of his attendance * * * *. The question is, whether there was such an agreement or whether the whole matter was left on the ordinary footing between physician and patient. On the 30th of August, the defendant writes a letter, from which it appears that he considered there was an account between them, and that Dr. Veitch did not stand in the ordinary position occupied by a physician in relation to his patient. Does this letter lead your minds to the conclusion that there was any previous agreement?" The Jury returned a verdict for the defendant, and subsequently a rule *nisi* was obtained for a new trial, on the ground that the verdict was against the evidence, and that the defendant was at all events entitled to the money paid out of pocket for the purpose of making the visits, it appearing that he had come daily from Richmond to London to attend, and had expended necessarily upwards of £60 on his journeys. In discharging the rule, Lord *Denman* said, "It must be assumed as clear that physicians and counsel usually perform their duties without any legal title to remuneration. Such has been the general understanding. To prevent that from operating, some express agreement must be shown, but in considering whether such an agreement existed, we cannot lose sight of the general understanding * * * * *. If a physician cannot continue his attendances without payment, he may give notice of that, or may forbear attending when he finds that remuneration is not made. As to the money paid out of pocket, it was not paid to the use of the patient but to that of the physician him-

self while he was carrying on his business, with a view to the ordinary remuneration,"

But notwithstanding a physician cannot recover his fees for attendance as a physician, yet if he be also a surgeon, and attend as a surgeon in a surgical case, his character of physician will not prejudice him, and he will be entitled to recover. Thus in *Battersby* v. *Lawrence and others, executors, Carrington & Marshman's Reports*, 278, which was an action for labour and attendance on the deceased by the plaintiff, as a surgeon and apothecary, for performing surgical operations on him and for medicines, the defendant pleaded, except as to £10 *non assumpsit*, and as to the £10 payment. The complaint of the deceased was dropsy, and the plaintiff's demand was £46 for his services. The plaintiff was both a physician and a surgeon. The plaintiff's operations on the deceased were puncturation, scarification, bandaging, and friction, which he frequently performed with his own hands. It was contended for the defendants that he was a physician, and that his services in the capacity of a surgeon were paid for by the £10. Mr. Justice *Maule*, in summing up, said, "This action is for work and labour as a surgeon and apothecary, and for surgical operations. The defendants deny that anything is due for such services done for their testator, or at any rate, they say that not more than £10 is due. Your verdict will be for the plaintiff if you believe he has done any work for the deceased as surgeon, to the amount of more than £10; but for the defendants, if what was done in that capacity was not of more value than £10, or if what the plaintiff did, was not done as a surgeon; for the law is that a physician cannot maintain an action for his fees. But the plaintiff claims to recover as a surgeon. If therefore, his attendances have been as physician, he cannot recover, independantly of any rule of law respecting physicians. It is said that the case was a surgical case, but not so altogether, and the patient is attended by a person who is both a physician and a surgeon. It is possible that if such a

person afford attendances only as a surgeon, yet that he cannot recover at all in consequence of his double capacity; if the law be so, and if you should find a verdict for the plaintiff, the defendant ought to have leave to move to enter a verdict the other way." A verdict was returned for the plaintiff, and on an application to the Queen's Bench for a rule for a non-suit or a new trial, the rule was refused. So also in the case of *Little* v. *Oldaker, Carrington and Marshman*, 377, we find Lord *Denman* thus expressing himself on the right of a physician, who is also a surgeon, to sue for his fees in a surgical case, "A physician cannot sue for his fees for anything he has done as a physician, either in attending or in prescribing medicine for a patient; but if he acts as a surgeon, or in any other capacity than that of a physician, he does not forfeit his right to sue for compensation for what he has done, provided he can shew that it was not done by him as a physician. This case seems to be one in which the plaintiff might have acted either as a surgeon or a physician, and it has been suggested that you ought to presume that he was paid his fees at the times when he was consulted, but that is evidently not so upon the evidence of Mr. Lane, and the fact that the plaintiff was not paid at the different times when he was consulted, goes to show that the plaintiff was not acting as a physician, and also that the defendant himself did not consider that the plaintiff was acting as a physician." The plaintiff had a verdict.

The being a physician gives the practitioner no right to practise as an apothecary, to do which he must have obtained a certificate from the Master, Wardens, and Society of Apothecaries. Neither does the possession of a Scotch or Irish diploma of Physician enable the party to practise as a physician in England—*Collins* v. *Carnagie*, 3 *Neville and Manning's Reports*, 703; *The Apothecarys' Company* v. *Collins*, 4 *Barnewall and Adolphus*, 604.

Physicians, however, are especially exempt, by the 20th section of the 55 Geo. 3, c. 194, from the pen-

alties for acting as apothecaries without being duly licensed.

By their Charter, which is confirmed by the 14 and 15 Henry 8th, the College of Physicians are enabled to sue any unqualified person practising as a physician within London, or seven miles, for £5 a month during such his practice —*The College of Physicians* v. *Harrison*, 9 *Barnewall and Creswell*, 524.

Physicians, if actually practising, are exempt from serving the office of constable, also of being jurymen, 6 Geo. 4, c. 50, s. 49, or of being chosen as overseers, 32 *Henry* 8, *c.* 40. They are in general entitled to a guinea a day when attending as witnesses in a court of justice.

Surgeons.—The rights of this body of Medical Practitioners are founded on the 3d of Henry VIIIth. cap. 11, s. 1, which after reciting "That common artificers, as smiths, weavers, and women, boldly and accustomably take upon them great cures, and things of great difficulty, in which they partly use sorcery and witchcraft," enacts, "That no person within the City of London, nor within seven miles of the same, take upon him to exercise and occupy as a Physician or Surgeon, except he be first examined, approved, and admitted by the Bishop of London, or by the Dean of St. Paul's for the time being, calling to him or them four doctors of physic, and for surgery other expert persons in that faculty, and for the first examination such as they shall think convenient and afterwards alway four of them that have been so approved upon the pain of forfeiture for every month that they do occupy as Physicians or Surgeons, not admitted nor examined after the tenour of this act of £5 to be employed." And the second Section provides, "And over this that *no person out of the said City and precints of seven miles of the same* except he have been (as is said before) approved in the same, take upon him to exercise and occupy as a Physician or Surgeon in any diocese within this realm; but if he be first

examined and approved by the bishop of the same diocese or he being out of the diocese by his vicar-general either of them calling to them such expert persons in the said faculties as their discretion shall think convenient, &c., upon like pain to them that occupy contrary to this act," &c. By subsequent statutes, the power of licensing surgeons is taken from the bishops, and vested in the Royal College of Surgeons. By the statute 34 and 35 Henry VIII, c. 8, unlicensed persons may use and minister in and to any outward sore, uncome wound, apostemations, outward swelling or disease, any herb or herbs, ointments, baths, pultess, and emplaisters, according to their cunning, experience and knowledge in any of the diseases sores and maladies beforesaid, and all other like to the same, in drinks for the stone, stranguary, or agues, without suit vexation trouble penalty or loss of their goods, the foresaid statute in the foresaid 3d year of the King's most gracious reign or any other act, &c. notwithstanding. With respect to this statute, Lord Chief Baron Comyns says (in his Digest title Physician D), that it "enables only to make application to external sores, &c., not to internal;" and in *Le Colledge de Physicians' case*, *Littleton's Reports*, 349. Lord Chief Justice Richardson, in delivering the judgment of the Court of Common Pleas, says, that "this statute reaches neither in words, nor in intent and meaning to give liberty to any person that practices or exercises for lucre or profit, so that this statute excludes all those who take any money or gain."

For a considerable period it was doubted whether or not, as the 3d Henry VIIIth, contains no absolute prohibition of persons unlicensed, acting as surgeons, but merely imposed a penalty, unlicensed persons could recover against patients whom they had attended, and the case of *Gremare* v. *Le Clerk Bois Valon*, 2 *Campbell's Reports*, 144, appeared to countenance the affirmative of the proposition. It is now, however, abundantly clear from several modern cases,

that when an act of parliament prohibits a thing either absolutely or merely under pain of a penalty, that no action can be maintained in respect of such forbidden matter; thus, in *Bensley* v. *Bignold*, 5 *Barnwell and Alderson's Reports* 335, which was an action brought to recover the price of the printing of a pamphlet, and for the value of the paper, it was objected that the pamphlet was printed in violation of the 39 Geo. III., c. 79, s. 27, which enacts that the printer's name shall be affixed; it was held that the printer could not recover; and Mr. Justice Bayley made these observations. "A party cannot be permitted in a court of law to recover for work and labour done in direct violation of the law. Where a provision is enacted for public purposes, I think that it makes no difference whether the thing be prohibited absolutely, or only under a penalty. The public have an interest that the thing shall not be done, and the objection in this case must prevail, not for the sake of the defendant, but for that of the public." So to Mr. Justice Best made similar remarks, namely, "The distinction between *mala prohibita* and *mala in se* has long since been exploded. It was not founded upon any sound principle, for it is equally unfit that a man should be allowed to take advantage of what the law says he ought not to do whether the thing be prohibited because it is against good morals or whether it be prohibited because it is against the intent of the statute." The same doctrine was propounded by the judges in the very recent case of *Cope* v. *Rowland*, 2 *Meeson and Welsby's Reports*, 149, in which Mr. Baron Parke in delivering the judgment of the Court of Exchequer laid it down "That where the contract which the plaintiff seeks to enforce, be it express or implied, is expressly or by implication forbidden by common or statute law, no Court will lend its assistance to give it effect. It is" (said his lordship) "equally clear that a contract is void if prohibited by statute, though the statute inflicts a penalty only, because such penalty implies a prohibition; and it may

be safely laid down, notwithstanding some dicta apparently to the contrary that if the contract be rendered illegal, it can make no difference in point of law whether the statute which makes it so, has in view the protection of the revenue or any other object. *The sole question is, whether the statute means to prohibit the contract.*"

An unqualified Surgeon therefore cannot maintain any action for his services in that capacity, and although he is probably exempt from any penalty by the provisions of the 34th and 35th of Henry VIII., he must trust alone to the honor and liberality of his patients for remuneration. Not so, however the licensed practitioner; no rule of law like that which operates on physicians, prohibits him from enforcing his demand for his services; the cases which we have before referred to, particularly those of *Battersby* v. *Lawrence*, and *Little* v. *Oldaker*, are sufficient illustrations of this position. It is however only when the Surgeon acts strictly within the limits of his duties as Surgeon, that the law protects him. We have before seen, that his character of Surgeon will not avail him if he assume in the case that of a physician, nor will it avail him in a case which is not properly a surgical one. He will not be allowed to recover in a case which he either attends as a physician or an apothecary, unless in the latter instance he have a certificate from the Apothecaries' Company. For medicines properly supplied and administered in a surgical case he can recover, notwithstanding he has no licence from the above Company. This was clearly settled in the somewhat recent case of *Simpson* v. *Ralfe*, 4 *Tyrwhitt's Reports*, 325. Where however, not being certificated by the Apothecaries' Company he administers medicine in a case not surgical, he cannot recover for them. In *Allison* v. *Haydon*, 4, *Bingham's Reports*, 619. which was an action for work and labour as a Surgeon and Apothecary with counts for medicines sold and delivered, at the time of the trial it appeared that the plaintiff had a certificate from

the College of Surgeons, but none from the Master and Wardens of the Apothecaries' Company. The defendant disputed certain charges for attending him in a *typhus fever*, and it was objected that he could not recover for these attendances, the 55 Geo. III. c. 194, s. 21 having enacted "That no apothecary shall be allowed to recover any charges claimed by him in any court of law unless such apothecary shall prove on the trial that he was in practice as an apothecary prior to or on the said 1st day of August, 1815, or that he has obtained a certificate to practice as an apothecary from the said Master, Wardens, and Society of Apothecaries as aforesaid." The judge being of opiniou that the plaintiff was not entitled to charge in this case directed him to be nonsuited. Subsequently a rule *nisi* for a new trial was obtained on the ground that the priveleges of the College of Surgeons reserved by the 29 section of the 55 Geo. III, c. 194, enabled Surgeons to make charges like those sought to be recovered. The rule on argument was discharged, and Lord Chief Justice Best made these observations. "In the infancy of medical science Surgeons were mere operators, and by the statute of 32 Hen. VIII. c. 42 the Barbers and Surgeons of London were incorporated together and made one company; but when the two corporations were made separate and distinct by statute 18 Geo. II. c. 15, by which examiners were appointed to examine and admit Surgeons, &c., the latter became a more honourable profession and moved in a higher grade. The province of a Surgeon has properly been said to be confined to the reduction and cure of fractures and other injuries affecting the limbs or such external ailments as may require the operation of the knife; and it cannot be extended to internal complaints or local diseases. Whatever medicine may be necessary for the purpose of removing a complaint which it is the duty of a Surgeon to attend to and cure he might perhaps be allowed to recover for, but he is not entitled to recover unless the medicine he administers be clearly ancillary to his duty as a Surgeon."

The same exemptions apply to Surgeons as to physicians and the same allowance when attending as witnesses in Courts of Justice.

APOTHECARIES.—The practice of this branch of the medical profession is chiefly regulated by the 55 Geo. 3, c. 194, commonly called "The Apothecaries' Act," the material sections of which it will be convenient at once to mention.

Sec. 1. Confirms the Charter of Incorporation.

Sec. 3. Gives powers to the Master, Wardens, or Assistants, or other qualified parties to be appointed by them to enter at all seasonable times, in any part of England and Wales, any Apothecary's shop, and search and prove if the medicines, &c., be wholesome and fit for the cure, health, and ease of his Majesty's subjects; and to seize, burn, or otherwise destroy all such as are stale, unwholesome, corrupt, pernicious, or hurtful, and gives power to the Master and Wardens to fine in the penalty of £5 for the first offence, £10 for the second, and £20 for every subsequent offence.

Sec. 5. Provides that if any apothecary shall, knowingly, wilfully, and contumaciously, refuse to make up, mix, compound, prepare, give, apply, or administer, or sell, or refuse to sell to any person or persons, any medicine, compound medicines, or medicinable compositions, or shall deliberately, or negligently, falsely, unfaithfully, fraudently, or unduly make, mix, compound, prepare, or refuse to prepare any Physician's prescription, he shall forfeit £5 for the first offence, £10 for the second, and for the third offence shall forfeit his certificate, and be incapable of practising for the future.

Sec. 14. Enacts, "And to prevent any person or persons from practising as an apothecary, without being properly qualified to practise as such, be it further enacted, that from and after the 1st day of August, 1815, it shall not be lawful for any person or persons (except persons already in practice as such) to practise as an apothecary, in any part of England

and Wales, unless he or they shall have been examined by the said Court of Examiners, or the major part of them, and have received a certificate of his or their being duly qualified to practise as such from the said Court of Examiners, or the major part of them, as aforesaid, who are hereby authorized and required to examine all person and persons applying to them for the purpose of ascertaining the skill and abilities of such person or persons in the science and practice of medicine, and his or their fitness and qualification to practice as an apothecary; and the said Court of Examiners, or the major part of them, are herby empowered either to reject such person or persons, or to grant a certificate of such examination, and of his or their qualification to practise as an apothecary, as aforesaid. Provided always, that no person shall be admitted to such examination until he shall have attained the full age of 21 years.

Sec. 15. Provides for a five years' apprenticeship to an apothecary.

Sec. 17. Enacts that no one shall act as an assistant to an apothecary, unless he has been examined and has received a certificate.

Sec. 20. Enacts, "That if any person (except such as are then actually practising as such,) shall after the said 1st day of August, 1815, act or practice as an apothecary, in any part of England and Wales, without having obtained such certificate, as aforesaid, every person so offending shall for every such offence forfeit and pay the sum of £20; and if any person (except such as are then acting as such, and excepting persons who have actually served an apprenticeship as aforesaid,) shall after the said 1st day of August, 1815, act as an assistant to any apothecary, or compound and dispense medicines, without having obtained such certificate as aforesaid, every person so offending shall for every such offence forfeit and pay the sum of £5."

Sec. 21. Enacts, "That no apothecary shall be allowed to recover any charges, claimed by him, in

any court of law, unless such apothecary shall prove on the trial, that he was in practice as an apothecary prior to, or on the said 1st day of August, 1815, or that he has obtained a certificate to practise as an as an apothecary, from the said Master, Wardens, and Society of Apothecaries, as aforesaid.

Sec. 28. Provides that the act shall not apply to Chemists and Druggists.

One of the principal duties of an apothecary consists in making up the prescriptions of physicians, which by the 5th section, he cannot refuse to do under a severe penalty. For very many years it was questioned whether or not apothecaries had any legal right to attend and prescribe for patients, as well as administer medicines; their right to do so was, however, definitively settled and recognized in the case before the House of Lords (in error) of *Rose* v. *The College of Physicians*, 5 *Brown's Cases in Parliament*, 553. Apothecaries, therefore, have the right both to sell and administer medicines, and to give advice. The distinction of functions between Apothecaries and Chemists or Druggists consists in the ability of the former to act, as we have described; namely, to prepare the prescriptions of physicians, and themselves to give advice; the latter (chemists and druggists), being confined to the compounding and vending of medicines only. Chemists and druggists then are confined merely to the preparation and sale of drugs and medicines, and if they exceed this practice by acting as apothecaries—that is either by making up physicians' prescriptions, or themselves giving advice, they will render themselves liable to the penalties of the foregoing act. In the late case of *The Apothecaries' Company* v. *Greenough*, 1 *Queen's Bench Reports*, 799, which was an action of debt, brought by the company under the 55 Geo. 3, c. 194, s. 20, to recover certain penalties against the defendant, for acting as an apothecary, not being licensed, which was tried at Liverpool, in 1839, it was proved that the defendant attended, advised, and furnished medi-

cines; and it was not proved on his behalf that he was in practice before the 1st of August, 1815, or had obtained any certificate; but it appeared that he kept a chemist and druggist's shop at the house where he transacted business, and it was argued that in doing the acts complained of, he had only used the trade of a chemist and druggist in the manner referred to by section 28, which states, "That nothing in this act contained shall extend or be construed to extend to prejudice, or in any way to affect the trade or business of a chemist or druggist, in the buying, preparing, compounding, dispensing, and vending drugs, medicines, and medicinable compounds, wholesale and retail; but all persons using or exercising the said trade or business, or who shall or may hereafter use or exercise the same, shall and may use, exercise, and carry on the same trade or business, in such manner and as fully and amply to all intents and purposes as the same trade or business was used, exercised, or carried on by chemists and druggists, before the passing of the act." In summing up, the learned judge said, that the only question was whether the defendant came within the exemption of this section, and he put to the jury, as questions for their consideration, whether the defendant saw sick persons and prescribed and furnished medicines for them, and whether such acts were done by chemists and druggists before the passing of the statute, not by usurpation, but as a part of their trade; on which point he observed the plaintiffs had given no evidence. In the latter case his lordship said the defendant would be within the exemption. The jury retired and returned with a written verdict, stating, that in the absence of proof as to the business of a chemist they found for the defendant. Subsequently the plaintiffs moved for a new trial, on the ground that the judge had misdirected the jury, and that if the proper practice of a chemist, before the passing of the act would include the acts of the defendant, he should have given evidence of the fact. The case was fully argued, and

the rule for a new trial was made absolute. Lord *Denman* said, "The jury appear to have found, under the direction of the learned judge, that chemists and druggists might practise as apothecaries before the statute. At all events, a *primâ facie* case has been proved against the defendant, and if he relied upon any practice before the act as exempting from penalties, it was for him to shew the practice." So too Mr. Justice *Patteson* said, "I cannot see any possibility of doubt in this case, unless it can be said that apothecary and chemist mean the same thing. The rule must be made absolute." The case was again tried before Mr. Justice *Wightman*, in 1841, and evidence as before was given for the plaintiffs—the cause was undefended. His lordship, after adverting to the clauses in the act, said, that "The distinction between apothecaries and chemists appeared to be, that the apothecary might not only prepare, dispense, and sell, but apply and administer medicines, and that if a chemist not only sold, but also applied and administered medicines, in the ordinary course of attending patients, he practised as an apothecary: and that if the defendant had so practised, he was liable to the penalties claimed." The plaintiffs had a verdict.

If the party be not a certificated apothecary, he not only cannot recover for his medicines furnished, but not even for the phials in which they were contained —*Steed* v. *Henley*, 1 *Carrington and Payne's Reports*, 574; and where a party claims to practise as an apothecary, by virtue of having been in practice as such before the 1st of August, 1815, pursuant to the 20th section, it will not be sufficient for him to prove that at some *prior* period he was in practice, unless at that time he was in practice—*The Apothecaries' Company* v. *Roby*, 5 *Barnewall and Alderson's Reports*, 949.

It has been much debated whether an apothecary can charge for his attendance on his patients. In the case of *Towne* v. *Lady Gresley*, 3 *Carrington and Payne's Reports*, 581, Lord Chief Justice *Best* said, "An apothecary may charge for his *attendances* if he

please, and then the jury will say what is reasonable for these attendances; or he may charge for the *medicines* he sends, but he cannot be permitted to charge for both." However in the case of *Handey* v. *Hewson*, 4 *Carrington and Payne*, 110, Lord *Tenterden* held that an apothecary might charge moderately for attendances as well as for medicines. And in the very recent case of *Morgan* v. *Hallen*, 8 *Adolphus and Ellis's Reports*, 489, this latter doctrine was upheld, by which it seems that there is no rule of law to prevent an apothecary from making distinct charges for attendances, as also for medicines; but that it is a question for the jury, in each particular case, whether the patient be liable to a separate demand for attendances as well as medicines, on the facts proving or disproving a contract to that effect, as the prior dealings between the parties, or the reasonableness or unreasonableness, under the circumstances of the case, of making a charge for attendances as well as for medicines. In this latter case Mr. Justice *Littledale*, in giving his judgment, said, "I do not say, as a matter of law, that an apothecary may, in every instance, charge for attendances, or that there may not, in some cases, be circumstances which would prevent it. An apothecary may have to take journeys of many miles, where he may find, as a conscientious man, he ought not to send medicines; in such a case it may be quite reasonable that a demand should be made for the attendance; on the other hand, if he has no great distance to go, attends but once a day, and sends in a great deal of medicine, the price of the medicine may be a sufficient remuneration. It depends upon circumstances whether he may charge for attendances or not. Those circumstances are for the jury."

By a provision in the 6 Geo. 4, c. 133, s. 4, it is enacted, "That every person who held, or thereafter should hold, a commission or warrant as surgeon, or assistant surgeon in his Majesty's Navy, or Army, should be entitled to practise as an apothecary, in any part of England or Wales, without having undergone

the examination or received the certificate required by the 55 Geo. 3, c. 194." And under this enactment it was held in *Steavenson* v. *Oliver*, 8 *Meeson and Welsby*, 234, that notwithstanding the act only remained in force for one year, and then expired, that those persons who held warrants prior to the 1st of August 1826 (the date of the act), and who therefore were entitled to practise as apothecaries, were not deprived of that right by the expiration of the act.

Apothecaries actually practising are exempt from serving on juries, or of filling the office of constable or overseer. T. W. S.

Temple, 1845.